

## **INVESTIGATION REPORT 14-13**

**LOBBYIST: Brenda Swick**

**September 19, 2014**

**SUMMARY:** A consultant lobbyist, Brenda Swick, (the lobbyist) filed a return, registration ID 18815957, with the Office of the Registrar of Lobbyists (ORL) on January 22, 2014. The lobbyist entered a colleague as another consultant lobbyist engaged by her to work on the undertaking. ORL staff asked the lobbyist to clarify whether her colleague would be submitting a new registration or if this was entered in error. The lobbyist informed the ORL that her colleague was not working on the undertaking and the file was no longer active. ORL staff advised the lobbyist to remove her colleague from the return and terminate the registration. The lobbyist did not comply with s. 4(2)(a) of the *Lobbyists Registration Act* (LRA) when she failed to remove her colleague from the return prior to the legislated deadline. The lobbyist also failed to terminate the registration within the timelines set out in s. 4(3) of the LRA. The lobbyist was fined \$700.

**Statutes Considered:** *Lobbyists Registration Act*, S.B.C. 2001, c. 42.

### **INTRODUCTION**

[1] This report concerns an investigation under s. 7.1 of the LRA. This section gives the Registrar of Lobbyists (Registrar) the authority to conduct an investigation to determine whether there has been compliance with the LRA or its regulations. If, after an investigation under s. 7.1, the Registrar or her delegate believes that the person under investigation has not complied with a provision of the LRA or its regulations, s. 7.2 of the LRA requires her to give notice of the alleged contravention and the reasons for her belief that the contravention has occurred. Prior to making a determination under s. 7.2(2), the Registrar must under s. 7.2(1)(b) give the person under investigation a reasonable opportunity to be heard respecting the alleged contravention.

[2] The LRA recognizes two types of lobbyists. This report focuses on “consultant lobbyists”, individuals who undertake to lobby for payment on behalf of a client.

[3] This investigation, conducted under the authority delegated to me by the Registrar under s. 7(4)(d) of the LRA, commenced when the lobbyist registered an undertaking on January 22, 2014, registration ID 18815957, to lobby on behalf of Mark Anthony Brands (the client). The investigation revealed that the lobbyist failed to make changes required under s. 4(2)(a) of the LRA to her return and failed to terminate the return contrary to 4(3) of the LRA.

### ISSUES UNDER CONSIDERATION

[4] The questions that must be considered are:

- (a) Whether the lobbyist made the required changes to her registration within the time lines set out in s. 4(2)(a) of the LRA;
- (b) Whether the lobbyist terminated the registration within the time lines set out in s. 4(3) of the LRA; and
- (c) If the lobbyist did not comply with the provisions of the LRA, what, if any, administrative penalty is appropriate in the circumstances?

### RELEVANT SECTIONS OF THE LRA

**“client”** means a person or organization on whose behalf a consultant lobbyist undertakes to lobby;

**“consultant lobbyist”** means an individual who, for payment, undertakes to lobby on behalf of a client;

**“lobby”**, subject to section 2 (2), means,

- (a) in relation to a lobbyist, to communicate with a public office holder in an attempt to influence
  - (i) the development of any legislative proposal by the government of British Columbia, a Provincial entity or a member of the Legislative Assembly,
  - (ii) the introduction, amendment, passage or defeat of any Bill or resolution in or before the Legislative Assembly,
  - (iii) the development or enactment of any regulation, including the enactment of a regulation for the purposes of amending or repealing a regulation,
  - (iv) the development, establishment, amendment or termination of any program, policy, directive or guideline of the government of British Columbia or a Provincial entity,

- (v) the awarding, amendment or termination of any contract, grant or financial benefit by or on behalf of the government of British Columbia or a Provincial entity,
  - (vi) a decision by the Executive Council or a member of the Executive Council to transfer from the Crown for consideration all or part of, or any interest in or asset of, any business, enterprise or institution that provides goods or services to the Crown, a Provincial entity or the public, or
  - (vii) a decision by the Executive Council or a member of the Executive Council to have the private sector instead of the Crown provide goods or services to the government of British Columbia or a Provincial entity,
- (b) in relation to a consultant lobbyist only, to arrange a meeting between a public office holder and any other individual...

**"lobbyist"** means a consultant lobbyist or an in-house lobbyist;

**"undertaking"** means an undertaking by a consultant lobbyist to lobby on behalf of a client, but does not include an undertaking by an employee to do anything...

#### **Form and content of return**

4(2) An individual who files a return must supply the registrar with the following information within the applicable period:

- (a) particulars of any change to the information in the return, within 30 days after the change occurs;...

4(3) Within 30 days after the completion or termination of an undertaking for which a return was filed, the consultant lobbyist who filed the return must inform the registrar of the completion or termination of the undertaking and indicate the date on which the completion or termination occurred.

## **BACKGROUND**

[5] On January 22, 2014, the lobbyist filed a return with the ORL, registration ID 18815957. The start date of the registration was January 22, 2014 with an end date of November 30, 2014. The lobbyist entered the name of a colleague as another consultant lobbyist engaged by her to lobby on behalf of the client.

[6] In an email dated January 23, 2014, ORL staff questioned the lobbyist about the start date of the return and when she expected her colleague to register.

[7] On January 23, 2014, by email, the lobbyist responded informing the ORL that the start date of the return was the same date she agreed to talk to a Minister on behalf of her client. The lobbyist mentioned that 'we' would be speaking to the Minister implying that she and the second lobbyist would be talking to the Minister.

[8] On January 28, 2014, ORL staff emailed the lobbyist asking once again for her to clarify whether her colleague would be lobbying on behalf of the client. If so, he would have to file his own return and if not, the lobbyist must remove the other lobbyist's name from her return.

[9] The lobbyist failed to respond to this email query.

[10] On February 4, 2014, ORL staff emailed the lobbyist's colleague notifying him that he must file an undertaking if he was lobbying on behalf of the client. The colleague replied by email, indicating that he was lobbying on behalf of the client. He asked if he was required to fill out a return. ORL staff responded advising the colleague that he was required to complete a return under s. 3(1) of the LRA within 10 days of entering into an undertaking to lobby on behalf of a client. The colleague replied that it was uncertain whether the undertaking would proceed. If it did he would file a return.

[11] In an email dated February 4, 2014, the lobbyist (who is the subject of this investigation) notified the ORL that the undertaking to lobby was no longer active and that no lobbying took place. ORL staff responded informing the lobbyist that no action was required by the lobbyist's colleague. However, the lobbyist would have to remove her colleague's name from the return and then end date (terminate) the return.

[12] On February 13, 2014, an email was sent to the lobbyist reminding her that she must make the required changes to her return within the legislated timelines.

[13] On March 6, 2014, the lobbyist responded advising that there never was an intention to lobby. The lobbyist asked how to remove the return. ORL staff advised the lobbyist that she must amend the end date of the return to reflect the termination date of the undertaking. The lobbyist was also provided with the Registry's Quick Tips guide and referred to the relevant page so she could complete the required corrections to her return.

[14] The lobbyist failed to make the changes to her return when she did not remove her colleague's name from the return within the 30 days required under s. 4(2)(a) of the LRA and failed to end date her return within 30 days of the termination of the undertaking to lobby contrary to s. 4(3) of the LRA.

## **INVESTIGATION**

[15] On March 28, 2014, the ORL initiated an investigation under s. 7.1 of the LRA to determine if the lobbyist had complied with ss. 4(2)(a) and 4(3) of the LRA.

[16] The file was assigned to me for review and decision.

[17] On April 16, 2014, the lobbyist removed her colleague from the return and terminated the return. In her April 16, 2014 response to the ORL, the lobbyist stated that she had "...erred in the interpretation of the requisite deadlines combined with business travel outside of the office."

[18] On May 1, 2014, I provided the lobbyist with formal notice under s. 7.2(1)(a) of the LRA that I had formed the belief, subject to hearing from the lobbyist, that she had failed to comply with ss. 4(2)(a) and 4(3) of the LRA. The notice set out the details of the contraventions. I invited the lobbyist to respond in writing to the alleged contraventions and provide any information or documentation pertinent to the allegations and the potential penalty.

[19] The lobbyist responded on June 3, 2014, acknowledging the following:

It was confirmed that the matter for which I initially registered was no longer active. As you note, per this date, I was expected to report any changes within 30 days. As you further note I was not able to meet this timeline.

[20] In her letter, the lobbyist sets out reasons why she should be excused from an administrative penalty. I have taken these reasons into consideration in determining an appropriate administrative penalty.

## **DISCUSSION**

[21] The lobbyist filed a return, registration ID 18815957, on January 22, 2014. The lobbyist notified the ORL that the undertaking was concluded by the client on February 4, 2014. On the same date, ORL staff advised the lobbyist that she must remove her colleague from the return and terminate the return. It was not until April 16, 2014, after the compliance investigation was commenced, that the lobbyist removed her colleague from the return and terminated the return. The changes to the return were made after the time limit set out in the LRA. In her response to the s.7.2(1)(a) notice issued on May 1, 2014, the lobbyist agreed that she did not make the changes within the legislated time frame.

## FINDING

[22] The lobbyist failed to make the changes to her registration when she did not remove her colleague from the return within the 30 day period required under s. 4(2)(a) of the LRA. Furthermore, the lobbyist did not terminate the return within 30 days after the end date of the undertaking contrary to s. 4(3) of the LRA.

## ADMINISTRATIVE PENALTY

[23] The purpose of the LRA is to promote transparency in lobbying by requiring lobbyists to disclose accurate, current and complete information. Failing to keep information in registrations up to date and accurate undermines the ability of the public to know who is actually attempting to influence government at any point in time, thereby defeating the LRA's goal of transparency.

[24] In assessing whether a penalty is necessary in this instance, I must consider, among other things,

- previous enforcement actions that have been taken in relation to this lobbyist,
- the gravity and magnitude of the contravention,
- whether the contravention was deliberate,
- whether the registrant derived any economic benefit from the contravention,
- any effort the registrant made to report or correct the contravention, and
- whether a penalty is necessary for general and specific deterrence.

[25] The lobbyist notes that she has not had any previous contraventions. Her file does not indicate that she has received any prior warnings.

[26] In terms of the gravity and magnitude of the contravention, the lobbyist states:

The contravention in question is one which turns on the fact that my registration was not updated so as to remove my colleague's name and reflect the eventual termination of the registration, *within the time limit*. It is important to note that I did in fact update my registration, following approximately a 30 day delay from the official deadline.

I submit that the gravity of a 30 day delay in updating my registration is extremely minimal, if any at all.

[27] It is correct that the lobbyist did eventually update and terminate the return. The lobbyist submits that 30 days is not a significant delay and is, therefore, not a serious contravention of the LRA.

[28] However, the lobbyist knew on February 4, 2014 that the agreement to lobby was terminated. ORL staff advised the lobbyist on three separate occasions to make the required changes to the return. On the third occasion, March 6, 2014, she was provided with instructions on how to make the changes to the return. If the lobbyist had made the changes by this date she would have complied with the LRA. Yet the lobbyist did not make the changes until 41 days after the legislated deadline.

[29] The lobbyist points to the ORL Penalties bulletin where she quotes:

It is unlikely you would be penalized for making an honest mistake in your registration [...]

If you make an honest mistake, or if (as will often happen) details of your initial registration change over time, you will be able to update your registration to include relevant changes in your registration information as you become aware of them.

ORL staff notified and provided assistance to the lobbyist on how to make the changes. The lobbyist had ample notice and opportunity to make the required changes to her registration within the prescribed time. Yet, the lobbyist failed to do so.

[30] The lobbyist submits the contravention was not deliberate. She points out that travel and family matters diverted her attention from her registration. The lobbyist submitted evidence to support her claim. I accept that the events occurring in the background could absorb the lobbyist's attention, distracting her from her responsibilities to change her registration.

[31] The lobbyist states that she did not derive any economic benefit in delaying the changes to her registration. I have no evidence which would lead me to believe otherwise.

[32] The lobbyist states that she attempted to update her return but lacked the familiarity with the registry to do so. She notes she asked for assistance on March 6, 2014. ORL staff responded to her request on the same date. The lobbyist states that she was not told that she had already passed the deadline to make the changes. She points out that ORL staff wrote to her on March 28, 2014 asking for a response by April 22, 2014. The lobbyist believed that the deadline to make the change to her return was April 22, 2014. She indicates that she made the changes on April 16, 2014, prior to what she believed was the April 22, 2014 deadline.

[33] The March 28, 2014 letter was, in fact, a compliance investigation letter requesting an explanation as to why the required changes were not made within the timeframe stipulated in the LRA. ORL staff requested the lobbyist respond to the letter by April 22, 2014. In fact, the lobbyist was aware as early as February 4, 2014 that she had to remove her colleague's name from the return and terminate her return. If she had made the change and terminated the return on this date she would not have exceeded the 30 day time limits set out in ss. 4(2)(a) and 4(3) of the LRA.

[34] ORL staff make every effort to assist lobbyists with their registrations to ensure they are fulfilling their commitments under the LRA. They do this by identifying potential issues or reminding lobbyists of approaching deadlines, but it is not required under the legislation to provide this service. It is ultimately the responsibility of the lobbyist to be aware of and meet their obligations under the LRA.

[35] On the question of specific deterrence, this investigation, hearing process, the ensuing administrative penalty and the publication of the outcome of this investigation will encourage the lobbyist to check that she has met her obligations under the LRA.

[36] I must also take into consideration the notion of general deterrence. The publication of this report and recognition that the ORL will issue lobbyists administrative penalties for contravention of the LRA, will remind all filers of their legal obligations to be diligent in keeping their registrations current.

[37] ORL policies and procedures, which are intended to act only as a guide, suggest a range of penalties for contraventions of the LRA. The penalty for failing to report changes required under s. 4(2)(a) ranges from \$100 to \$5,000 for a first contravention. The penalty for failing to terminate a registration within 30 days required under s. 4(3) of the LRA ranges from \$100 to \$5,000 for a first contravention.

## **CONCLUSION**

1. Under s. 7.2(2) of the LRA, I find that the lobbyist contravened ss. 4(2)(a) and 4(3) of the LRA in respect of registration ID 18815957.
2. The notice of alleged contravention has been substantiated.
3. In assessing these penalties, I have taking into consideration the personal circumstances raised by the lobbyist. For the reasons outlined above, I impose an administrative penalty of \$350 for failing to make the required changes to the return within 30 days and \$350 for failing to end date the

return within 30 days after the undertaking to lobby was terminated. The combined administrative penalty is \$700.

4. The lobbyist must pay this penalty no later than October 31, 2014.
5. If the lobbyist requests reconsideration under s. 7.3 of the LRA, she is to do so within 30 days of receiving this decision by providing a letter in writing directed to the Registrar of Lobbyists at the following address, setting out the grounds on which reconsideration is requested:

Office of the Registrar of Lobbyists for British Columbia  
PO Box 9038, Stn. Prov. Govt.  
Victoria, BC V8W 9A4

Email: [info@bcorl.ca](mailto:info@bcorl.ca)

September 19, 2014

**ORIGINAL SIGNED BY**

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Tim Mots  
Investigator  
Office of the Registrar of Lobbyists